

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

**FILED**

APR 24 2017

Clerk, U.S. District Court  
District Of Montana  
Billings

ROBERT COTNER,

Plaintiff,

vs.

KNOWN AND UNKNOWN DRUG  
CARTEL MEMBERS, et al.,

Defendants.

CV 17-40-BLG-SPW

ORDER ADOPTING  
MAGISTRATE'S FINDINGS  
AND RECOMMENDATION

Plaintiff Robert Cotner, a prisoner confined in Oklahoma, brought a motion to proceed in forma pauperis on a complaint that alleges a multi-jurisdictional criminal racketeering enterprise is flooding Montana with illegal drugs. (Doc. 1 at 1). United States Magistrate Judge Cavan recommends Cotner's motion be denied because Cotner is a serial litigator with a long history of filing frivolous actions and is not entitled to proceed in forma pauperis. (Doc. 3 at 2).

Cotner objects to Judge Cavan's recommendation. (Doc. 4). Cotner argues he has never filed a frivolous action.

**I. Law**

**A. Standard of review**

A district court reviews de novo any part of a Magistrate Judge's Findings and Recommendations to which there has been proper objections. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

## **B. Proceeding in forma pauperis**

Permission to proceed in forma pauperis is discretionary with the Court. 28 U.S.C. § 1915(a). 28 U.S.C. § 1915(g) provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

## **II. Discussion**

Judge Cavan's recommendation includes an extensive list of courts that have dismissed Cotner's filings as frivolous. (Doc. 3 at 2-4). Cotner argues he is not barred by 28 U.S.C. § 1915(g) from proceeding in forma pauperis because, according to Cotner, the Oklahoma Supreme Court held he has "never [] filed a frivolous case." (Doc. 4 (citing *Cotner v. Golden*, 136 P.3d 630 (Okla. 2006))). The Court disagrees with Cotner's interpretation of the Oklahoma Supreme Court's opinion.

In *Golden*, Cotner mailed a motion to proceed in forma pauperis in Oklahoma state district court. 136 P.3d at 631. The clerk of court returned his

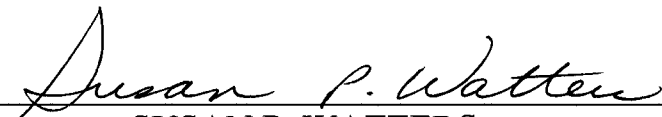
motion to him with the word “denied” written at the top and the date and signature of the district judge. *Golden*, 136 P.3d at 631. The Oklahoma Supreme Court held the clerk of court was required to file the motion and the district court was required to state the basis for the denial. *Golden*, 136 P.3d at 633. The Oklahoma Supreme Court stated that on remand the district court could “take judicial notice of its own records,” including that a “Robert Cotner” was listed in the Oklahoma Registry of Frivolous or Malicious Appeals. *Golden*, 136 P.3d at 633. Contrary to Cotner’s argument, the Oklahoma Supreme Court did not hold he has “never [] filed a frivolous case.” Cotner’s objection is overruled.

### **III. Conclusion**

Accordingly, IT IS HEREBY ORDERED:

1. Judge Cavan’s Findings and Recommendation (Doc. 3) are ADOPTED IN FULL.
2. Cotner’s Motion to Proceed in forma pauperis (Doc. 1) is DENIED.
3. The Clerk of Court is directed to enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure and close the case.

DATED this 24<sup>th</sup> day of April, 2017.

  
\_\_\_\_\_  
SUSAN P. WATTERS  
United States District Judge